

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Achieve Telecom Network of MA)	File Nos. SLD- 514834, <i>et al.</i>
Canton, MA)	
)	
Brockton Public School District)	File Nos. SLD- 575224, <i>et al.</i>
Brockton, MA)	
)	
Chelsea School District)	File Nos. SLD- 502263, <i>et al.</i>
Chelsea, MA)	
)	
Somerville School District)	File Nos. SLD- 425096, <i>et al.</i>
Somerville, MA)	
)	
Springfield Public Schools)	File Nos. SLD- 433768, <i>et al.</i>
Springfield, MA)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: April 15, 2015

Released: April 15, 2015

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny a request by Achieve Telecom Network of Massachusetts, LLC, (Achieve) seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) for funding years 2004-2008.¹ We also deny requests from Brockton Public School District (Brockton), Chelsea School District (Chelsea), Somerville School District (Somerville), and Springfield Public Schools (Springfield) (collectively, the Schools or the School Petitioners) seeking review of related USAC decisions.²

¹ See Letter from Joy Jackson, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed June 28, 2010) (Achieve Request for Review). Achieve filed a consolidated appeal for the applications identified in Appendices A-D. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² The Schools' Requests for Review are also listed in Appendices A-D.

2. In its decisions, USAC determined that the Schools and their selected service provider, Achieve, violated the Commission's competitive bidding rules because Achieve had an unfair advantage during the Schools' respective competitive bidding processes.³ After reviewing the underlying record, including subpoenaed records,⁴ we find that Achieve unlawfully funded the Schools' co-payment for E-rate services through its *de facto* control of grants to the Schools and caused the Schools to violate the requirement that applicants not accept payment from vendors, directly or indirectly, for the applicants' non-discounted portion of the cost of E-rate supported services.⁵ We also find that Achieve violated its obligation to ensure compliance with the non-discount share requirement through its independent billing and collection responsibilities.⁶ Additionally, we affirm USAC's finding that these grants gave Achieve an unfair advantage during the Schools' competitive bidding processes. We therefore deny the Schools' and Achieve's Requests for Review.

3. We direct USAC to discontinue its recovery actions against the Schools, but continue its recovery actions against Achieve, the party that, in this case, was in the best position to prevent the violation of E-rate program rules.⁷ We also direct USAC to apply this ruling to all other applications in

³ See *infra* n.12.

⁴ See 47 C.F.R. § 54.723 (requiring the Wireline Competition Bureau to conduct a *de novo* review of appeals of decisions made by USAC). On August 5, 2014 and October 20, 2014, the Bureau sent Petitioners documents that the FCC's Office of Inspector General had obtained pursuant to subpoena. See Email from Regina Brown, Wireline Competition Bureau, Federal Communications Commission, to Joy Jackson, Achieve Telecom Network (dated August 5, 2014); Email from Regina Brown, Wireline Competition Bureau, Federal Communications Commission to Nichole O'Neal, Brockton Public Schools, Miguel Andreottola, Chelsea Public School District, James Halloran, Somerville School District, and Robert Hamel, Springfield School District (dated Aug. 5, 2014) (August 2014 Wireline Competition Bureau Email); Email from Regina Brown, Wireline Competition Bureau, Federal Communications Commission, to Robert Howell, Springfield School District and Bruce Desmond, Somerville School District (dated Aug. 7, 2014) (re-sent due to change in contact information); Letter from Ryan D. Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, to Joy Jackson, Achieve Telecom Network, Nichole O'Neal, Brockton Public Schools, Kathleen Breck, City of Springfield Law Department, Miguel Andreottola, Chelsea Public Schools, and Frank Wright, City Solicitor, City of Somerville (dated Oct. 20, 2014). The subpoenaed documents, hereinafter identified with FCC Bates Stamp numbers (*e.g.*, FCC Bates Number X), were not available earlier in the appeals process. The Bureau therefore invited Petitioners to supplement their appeals after review of the subpoenaed documents. Those Petitioners filing supplemental materials are listed in Appendix E.

⁵ 47 C.F.R. §54.523; see also *infra* para. 5.

⁶ See FCC Form 473, Service Provider Annual Certification Form, OMB 3060-0856, at Block 2 (April 2007); FCC Form 473, Service Provider Annual Certification Form, OMB 3060-0856, at Block 2 (October 1998) (FCC Form 473) (directing the service provider to certify that its invoice forms are based on bills issued by the service provider to the service provider's customers and exclude any charges previously invoiced to the Fund administrator for which the Fund administrator has not yet issued a reimbursement decision). See also *Request for Review of a Decision of the Universal Service Administrator by Hispanic Information and Telecommunications Network; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 23 FCC Rcd 15432 (Wireline Comp. Bur. 2008) (*HITN Order*) (upholding USAC's determination that the service provider is liable for repayment if it fails to demonstrate a *bona fide* effort to collect the school's non-discount share and directing the service provider to explain to USAC on remand why it limited its efforts to secure payment for the applicant's non-discount share to only three written requests over a 16-month period.).

⁷ See *Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, paras. 15 (2004) (*Schools and Libraries Fourth Report and Order*) (directing USAC to consider which party was in a better position

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which Achieve is the selected service provider to the extent evidence shows that those applications were subject to the same or substantially similar misconduct on Achieve's part as described herein.

II. BACKGROUND

4. E-rate Program Rules and Requirements. The E-rate program provides eligible schools, libraries, and consortia that include eligible schools and libraries funding for the purchase of telecommunications, telecommunications services, Internet access, internal connections and basic maintenance of internal connections.⁸ Under the Commission's rules, the Universal Service Fund, administered by USAC, pays 20 percent to 90 percent of the price of eligible services, based on indicators of need, and the applicants pay the balance.⁹ The percentage paid by USAC for eligible services is generally referred to as an applicant's discount rate, and the amount paid by the applicant is referred to as the "non-discount share."¹⁰ Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for eligible services than applicants with low levels of eligibility for such programs.¹¹ The School Petitioners in this appeal qualified for discounts of between 79 percent and 88 percent, which meant they received \$10,181,315, collectively, in funding commitments and should have paid \$1,694,863, collectively, for their non-discount share.¹²

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to prevent the statutory or rule violation, and which party committed the act or omission that formed the basis for the statutory or rule violation). Although that Order identifies as a relevant factor which party committed the violation, in this particular case, that factor does not militate in favor of targeting the Schools because the evidence overwhelmingly demonstrates that any violation was caused by Achieve's deception and misconduct. Since there is no evidence that the Schools knew of this scheme, or that it was readily susceptible of discovery, we find that, under the framework set forth in the *Schools and Libraries Fourth Report and Order*, it is appropriate for USAC to continue its recovery actions against Achieve and discontinue them with respect to the Schools. *See also, Request for Review of the Decision by the Universal Service Administrator by Bell South Telecommunications, Inc. and Union Parish School Board; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 11208 (Wireline Comp. Bur. 2012) (*Bell South Order*) (seeking recovery of funding from the party that violated the Commission's rules); and *infra* para. 30.

⁸ 47 C.F.R. §§ 54.501-54.502.

⁹ *See* 47 C.F.R. §§ 54.505(a)-(b).

¹⁰ *See* 47 C.F.R. § 54.523 (2004) (requiring applicants to pay the non-discount price of any services purchased with E-rate funds). *See also* 47 C.F.R. §§ 54.504, 54.508 (2004); 47 C.F.R. §§ 54.503, 54.523 (2011). The E-rate program pays for the discounted portion of the price of eligible services. *See* 47 C.F.R. §§ 54.504, 54.523 (2004); 47 C.F.R. §§ 54.503, 54.523 (2011). In this Order, we describe the requirements of the E-rate program as they currently exist, but because the Order involves applications from funding years 2004-2008, and the Commission has re-organized the E-rate rules since then, where the Commission's codification of the rules in the Code of Federal Regulations has changed, we also cite to the relevant rules as they existed during the relevant funding year.

¹¹ 47 C.F.R. § 54.505(b).

¹² *See* Letter from USAC, Schools and Libraries Division, to Nichole O'Neal, Brockton Public School District (dated Sept. 8, 2008) (regarding funding year 2007 FCC Form 471 application number 575224 (funding request number (FRN) 1590640)); Letter from USAC, Schools and Libraries Division, to Nichole O'Neal, Brockton Public School District (dated Oct. 31, 2008) (regarding funding year 2008 FCC Form 471 application number 614875 (FRN 1754095)); Letter from USAC, Schools and Libraries Division, to Nichole O'Neal, Brockton Public School District (dated Jan. 14, 2009) (regarding funding year 2006 FCC Form 471 application number 514834 (FRN 1416498)); Letter from USAC, Schools and Libraries Division, to Miguel Andreottola, Chelsea School District (dated Jan. 14, 2009) (regarding funding year 2006 FCC Form 471 application number 502263 (FRN 1381110)); Letter from USAC, Schools and Libraries Division, to Miguel Andreottola, Chelsea School District (dated Jan. 14, 2009) (regarding funding year 2005 FCC Form 471 application number 447884 (FRN 1232738)); Letter from

"(continued...)"

5. The Commission's rules prohibit the selected service provider from paying for, and applicants from receiving from the selected service provider, the applicant's non-discount share of the costs of E-rate eligible services.¹³ The Commission permits applicants to use grants to help pay for their non-discount share so long as the grants do not come from the applicant's selected service provider, or from any entity not independent of the service provider.¹⁴ Since 2003, USAC has provided guidance on its website and in its training materials explaining that service providers may not indirectly pay any portion of an applicant's non-discount share by steering funds through a third-party donor organization to particular schools or libraries.¹⁵ Service providers are also required to make a *bona fide* effort to collect

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USAC, Schools and Libraries Division, to James Halloran, Somerville School District (dated Sept. 8, 2008) (regarding funding year 2004 FCC Form 471 application number 425096 (FRN 1175002)); Letter from USAC, Schools and Libraries Division, to Joy Jackson, Achieve Telecom Network of MA, LLC (dated Dec. 10, 2008) (regarding Somerville School District funding year 2008 FCC Form 471 application number 613046 (FRN 1688549)); Letter from USAC, Schools and Libraries Division, to James Halloran, Somerville School District (dated Jan. 14, 2009) (regarding funding year 2005 FCC Form 471 application number 455467 (FRN 125749)); Letter from USAC, Schools and Libraries Division, to James Halloran, Somerville School District (dated Jan. 14, 2009) (regarding funding year 2006 FCC Form 471 application number 516499 (FRN 1421087)) (Somerville Commitment Adjustment (COMAD)); Letter from USAC, Schools and Libraries Division, to Joy Jackson, Achieve Telecom Network of MA, LLC (dated Sept. 8, 2008) (regarding Springfield Public Schools funding year 2004 FCC Form 471 application number 433768 (FRN 1207981)); Letter from USAC, Schools and Libraries Division, to Robert Hamel, Springfield Public Schools (dated Sept. 8, 2008) (regarding funding year 2005 FCC Form 471 application number 487623 (FRN 1352672)); Letter from USAC, Schools and Libraries Division, to Robert Hamel, Springfield Public Schools (dated Sept. 8, 2008) (regarding funding year 2006 FCC Form 471 application number 538332 (FRN 1490940)); Letter from USAC, Schools and Libraries Division, to Robert Hamel, Springfield Public Schools (dated Sept. 8, 2008) (regarding funding year 2007 FCC Form 471 application number 577110 (FRN 1595241)) (collectively, Notification of Commitment Adjustment Letters (COMADs)).

¹³ See, e.g., 47 C.F.R. § 54.523; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26928, para. 41 (2003) (*Schools and Libraries Third Report and Order*) (adopting section 54.523 of the rules to clarify and amend the Commission's codified rules to reflect the requirement "that an entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program," which includes restrictions on providers' conduct, including "a prohibition on the provision of free services to an eligible entity by a service provider that is also providing discounted services to the entity"); USAC website, Schools and Libraries, Free Services Advisory, <http://sl.universalservice.org/reference/freeservices.asp> (content dated Jan. 4, 2002) (last visited Mar. 17, 2015) (Free Services Advisory) ("Applicants and service providers are prohibited from using the Schools and Libraries Support Mechanism to subsidize the procurement of ineligible or unrequested products and services, or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled.") *cited in Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26928, para. 41, n.75.

¹⁴ See 47 C.F.R. § 54.523; USAC website, Schools and Libraries, Free Service Advisory, available at <http://www.usac.org/sl/applicants/step07/obligation-to-pay.aspx> (content dated Jan. 5, 2003) (last visited Mar. 17, 2015) (Free Service Advisory 2003) (stating that funds from an outside source must be independent of the applicant's service provider(s)). This language has appeared on USAC's website since 2003. See also USAC website, Schools and Libraries, Train-the-Trainer Workshop 2004, available at <http://www.usac.org/about/tools/TrainingArchive/Default.aspx?div=3> (last visited Mar. 17, 2015) (Train-the-Trainer Workshop 2004) (stating that the service provider cannot pay the applicant's share either directly or indirectly).

¹⁵ See Free Services Advisory 2003; Train-the-Trainer Workshop 2004. In its pleadings, Achieve acknowledges USAC's guidance that a service provider may "help applicants obtain grants ... [only] so long as the grants or organizations are independent of the service provider." See Achieve Request for Review at 4. Achieve's pleading also highlights Example 7 from that USAC guidance, which explains that when a service provider donates funds "to a grant organization, with a stipulation for how the funds are to be disbursed, that [conduct] violates program rules."

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from applicants the non-discount portion of the costs of services supported by the E-rate program and to certify on the FCC Form 473, Service Provider Annual Certification Form, that it has billed the applicant for its non-discount share.¹⁶ The Commission has determined that failure to make a *bona fide* effort will render the service provider liable for recovery of E-rate funds disbursed for which the applicant did not pay its non-discount share.¹⁷

6. The Commission's rules also require E-rate applicants to seek competitive bids for all services eligible for support.¹⁸ The Commission has consistently stated that the competitive bidding process must be fair and open and must not have been compromised because of improper conduct by the applicant, service provider, or both parties.¹⁹ In essence, all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.²⁰

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Id. at 5. We note that, in 2010, the Commission codified the existing requirement that the E-rate competitive bidding process be fair and open. *See Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future; Sixth Report and Order*, CC Docket No. 02-6, 25 FCC Rcd 18762, 18798-800, paras. 85-86 (2010) (*Schools and Libraries Sixth Report and Order*). In that Order, the Commission also codified the existing prohibition on improper gifts under the competitive bidding rules. *Id.* at 18802, para. 90; 47 C.F.R. 54.503(d) (codifying the limitations on gifts and reiterating that service provider donations to applicants are not legitimate charitable contributions when "directly or indirectly related to E-rate procurement activities . . . [or] given to circumvent competitive bidding and other E-rate program rules . . . including those [rules] requiring schools and libraries to pay their own non-discount share for the services they are purchasing.") (Gift Restrictions).

¹⁶ See FCC Form 473; *HITN Order*, 23 FCC Rcd at 15436-37, paras. 9-11.

¹⁷ See *HITN Order*, 23 FCC Rcd at 15436-37, paras. 9-11.

¹⁸ 47 C.F.R. § 54.504 (2004); 47 C.F.R. § 54.503 (2011).

¹⁹ See, e.g., *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939, para. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *Universal Service First Report and Order*, 12 FCC Rcd 8776, 9029, paras. 480-81 (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Federal-State Joint Board on Universal Service; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates); *Request for Review by MasterMind Internet Services, Inc.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000) (*MasterMind Order*) (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process). See also *Request for Review by Dickenson County Public Schools; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002); *Request for Review by Approach Learning and Assessment Center; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 22 FCC Rcd 5296, 5303, para. 19 (Wireline Comp. Bur. 2007) (finding that service provider participation may have suppressed fair and open competitive bidding); *Schools and Libraries Sixth Report and Order*, 25 FCC at 18798-800, paras. 85-86; 47 C.F.R. § 54.504 (2004); 47 C.F.R. § 54.503 (2011).

²⁰ See, e.g., *Mastermind Order*, 16 FCC Rcd 4033, para. 10.

7. Summary of Facts. The Schools at issue in this appeal entered into contracts with Achieve and filed their FCC Forms 471 with USAC for funding years 2004 through 2008.²¹ During this time, the record demonstrates that Achieve directed money to the Schools through several intermediaries, including the United States Distance Learning Association (USDLA), to pay for the Schools' non-discount share of the cost of E-rate eligible distance learning services.²² As detailed below, a foundation called the Ralph G. Adams Foundation (Foundation) was established to which Achieve and its business partners donated more than \$450,000. Nearly all of the funds donated to the Foundation, whose President was an Achieve employee, were transferred to USDLA for a grant program called the Digital Divide Fund (DDF). USDLA used the funds from the DDF to pay the non-discount share of E-rate services for Achieve's clients, and only Achieve's clients, and received substantial assistance and oversight from Achieve in the DDF's operation.²³ USDLA also reaped benefits from this arrangement because it retained for itself as a service fee 10 percent to 20 percent of the grant amount issued to schools that used Achieve as their service provider.²⁴

8. The record demonstrates that Achieve attempted to conceal from USAC and the FCC its involvement with the Schools' co-payments. First, rather than providing the co-payments directly to the Schools, Achieve created the Foundation, which was controlled by Victor Gatto, an Achieve employee.²⁵

²¹ FCC Form 471, Brockton Public School District (filed Feb. 7, 2007) (for funding year 2007); FCC Form 471, Brockton Public School District (filed Feb. 7, 2008) (for funding year 2008); FCC Form 471, Chelsea School District (filed Feb. 14, 2005) (for funding year 2005); FCC Form 471, Chelsea School District (filed Feb. 2, 2006) (for funding year 2006); FCC Form 471, Somerville School District (filed Feb. 3, 2004) (for funding year 2004); FCC Form 471, Somerville School District (filed Feb. 10, 2005) (for funding year 2005); FCC Form 471, Somerville School District (filed Feb. 9, 2006) (for funding year 2006); FCC Form 471, Springfield School District (filed Feb. 2, 2004) (for funding year 2004); FCC Form 471, Springfield School District (filed Feb. 14, 2005) (for funding year 2005); FCC Form 471, Springfield School District (filed Feb. 14, 2006) (for funding year 2006); FCC Form 471, Springfield School District (filed Jan. 31, 2007) (for funding year 2007).

²² USDLA is a non-profit organization whose "mission is to serve the distance learning community by providing advocacy, information, networking and opportunity." See USDLA website, at <http://www.usdla.org> (last visited Mar. 17, 2015).

²³ See *infra* paras. 11-14; see also *infra* n. 33 and 46 (only Achieve's clients received DDF grants). The FCC Inspector General Subpoena, in Part 2, question 3 (c), sought copies of all applications for funding from the DDF. All of the applications produced by USDLA had been submitted by schools that were considering using Achieve as their service provider. None of the subpoenaed documents suggests that any schools other than Achieve clients were made aware of the availability of this funding.

²⁴ See *infra* para. 15.

²⁵ Mr. Gatto was named President of the Foundation and was married to Achieve's president, Ms. Joy Jackson. See FCC Bates Numbers 000151-000162, IRS Form 1023, Application for Recognition of Exemption, filed by The Ralph G. Adams Foundation (dated Dec. 10, 2006). The record shows that Ms. Jackson was privy to the Foundation's financial transactions. For example, in an email exchange on June 5, 2007, Ms. Jackson informs USDLA that it will be receiving a donation from the Foundation for \$45,000. See FCC Bates Number 00568, Email from Joy Jackson, Achieve Telecom Network, to Patricia Marcelonis, USDLA (dated June 5, 2007) (stating "You will be receiving a donation from the Adams Foundation for \$45,000 on Thursday. Please just let me know when you receive it- thanks."). In a subsequent email exchange on June 7-8, 2007, Ms. Jackson confirms all of the Ralph G. Adams Foundation donations for 2007. See FCC Bates Number 00589, Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network (dated June 7, 2007) (stating "If I may, can I go over the total donations from The Ralph G. Adams Foundation for this year to make sure I have all of them to include in the donation letter- 4-3-07, \$37,000, Check #1001; 5-7-07, \$37,500, Check #1002; and 6-6-07, \$45,000, Check #1003.") Ms. Jackson replies, "Looks correct to me." See FCC Bates Number 00589, Email from Joy Jackson, Achieve Telecom Network, to Patricia Marcelonis, USDLA (dated June 8, 2007). The Foundation closed its bank account on January 27, 2010.

The evidence shows that funding for the Foundation came from two sources: Achieve itself²⁶ and one of Achieve's business partners, Roberts Communications Network (RCN).²⁷ Ultimately, the Foundation transferred more than \$400,000 to USDLA for the DDF.²⁸ The only other major source of funding for the DDF program was Vincent Barletta (Barletta),²⁹ who also had close ties to Achieve.³⁰ Subpoenaed bank

²⁶ Achieve made the following donations by wire transfer or check to the Foundation totaling \$280,000: \$175,000 (posted date 3-21-07), \$60,000 (4-17-07), and \$45,000 (6-4-07). See FCC Bates Number 000179, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 3-21-07 through 3-31-07) (showing \$175,000 deposit 3-22-07); FCC Bates Number 00289, Check from Achieve Telecom Network, LLC to the Adams Foundation, Bank of America, N.A. Check Number 2003 (dated 4-17-07, processed 4-17-07); FCC Bates Number 00291, Check from Achieve Telecom Network, LLC to the Adams Foundation, Bank of America, N.A. Check Number 2006 (dated 6-4-07, processed 6-4-07) (collectively, Achieve Donations).

²⁷ In its bid proposal to Brockton, Achieve disclosed a partnership with RCN. See Letter from Joy Jackson, Achieve Telecom Network, LLC to Ms. Nichole O'Neal, O'Neal Consulting, on behalf of Brockton Public Schools, Achieve Proposal, Proposer Qualifications at 4 (dated Jan. 9, 2007) (stating "[t]he Achieve Xpress satellite networks are provided in partnership with Roberts Communications Network, Inc., which specializes in providing satellite communications used to transmit the audio, video and data for educational programming, sporting events, and shopping channels."). RCN made the following donations to the Foundation by wire transfer totaling \$187,500: \$37,500 (posted date 3-28-07), \$37,500 (5-4-07), \$37,500 (8-1-07), \$37,500 (3-19-08), and \$37,500 (3-19-08). See FCC Bates Number 000179, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 3-21-07 through 3-31-07) (showing \$37,500 wire transfer entitled "Achieve Donation" 3-28-07); FCC Bates Number 000185, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 5-1-07 through 5-31-07) (showing \$37,500 wire transfer entitled "Achieve Quarterly Donation" 5-04-07); FCC Bates Number 000194, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 8-1-07 through 8-31-07) (showing \$37,500 wire transfer entitled "Achieve Quarterly Donation" 8-1-07); FCC Bates Number 00215, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 3-1-08 through 3-31-08) (showing two wire transfers entitled "Achieve Quarterly Donation" in the amount of \$37,500 on 3-19-07) (collectively, RCN Donations).

²⁸ The Foundation deposited or transferred funds into USDLA's DDF, either by wire or check, on five separate occasions totaling \$409,500: \$175,000 (transfer date 3-22-07), \$37,000 (4-4-07), \$37,500 (5-8-07), \$45,000 (6-6-07), and \$115,000 (4-8-08). See FCC Bates Number 000179, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 3-21-07 through 3-31-07) (showing \$175,000 wire transfer 3-22-07); FCC Bates Number 00292, Check from The Ralph G. Adams Foundation to USDLA Digital Divide Fund, Bank of America, N.A. Check Number 1001 (dated 4-3-07, processed 4-4-07); FCC Bates Number 00293, Check from The Ralph G. Adams Foundation to USDLA Digital Divide Fund, Bank of America, N.A. Check Number 1002 (dated 5-7-07, processed 5-8-07); FCC Bates Number 00294, Check from The Ralph G. Adams Foundation to USDLA Digital Divide Fund, Bank of America, N.A. Check Number 1003 (dated 6-6-07, processed 6-7-07); FCC Bates Number 00295, Check from The Ralph G. Adams Foundation to USDLA Digital Divide Fund, Bank of America, N.A. Check Number 1004 (dated 4-17-08, processed 4-18-08) (collectively, Foundation Donations). According to Achieve, it informed the Schools about the existence of USDLA's Digital Divide Fund (DDF) but did not reveal to the Schools Achieve's connections with the DDF. See Letter from Joy Jackson, Achieve Telecom Network, to Jennifer Cerciello, Schools and Libraries Division, USAC, at 2 (dated July 17, 2008) (Jackson Response).

²⁹ Vincent Barletta, through a variety of entities, transferred funds into USDLA's DDF by wire and check on three separate occasions totaling \$415,000: \$35,000 (11-20-06), \$50,000 (2-6-07 from VFB Dynasty Trust), and \$330,000 (5-20-08 from Barletta Cos). See FCC Bates Number 00733, Statement from Bank of America, N.A., United States Distance Learning Business Economy Checking (statement period 2-1-07 through 2-28-07) (showing \$50,000 wire transfer from VFB Dynasty Trust 2-6-07); FCC Bates Number 00766, Statement from Bank of America, N.A., United States Distance Learning Business Economy Checking (statement period 5-1-08 through 5-31-08) (showing \$330,000 wire transfer from Barletta Company, Inc. 5-20-08) (collectively, Barletta Donations). See Email from Debra M. Kriete, Esq., on behalf of USDLA, to Sonja Rifken, Office of the Inspector General,

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records show that, after Achieve and its business partner, RCN, deposited or wired funds into the Foundation's bank account, the Foundation would send those funds to USDLA for deposit into its DDF fund.³¹ USDLA then used the DDF fund to provide grants to the Schools to cover the Schools' non-discount share.³² Notably, USDLA provided grants to only those applicants that were Achieve's clients.³³

9. Consistent with Achieve's role in funding and overseeing the DDF program, subpoenaed documents show that Achieve's President, Ms. Joy Jackson, routinely notified USDLA when to expect

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Federal Communications Commission (dated Feb. 10, 2013) (confirming the \$35,000 Barletta donation on November 20, 2006).

³⁰ The record shows a close connection between Achieve (through Ms. Jackson) and Barletta. For example, it appears that a \$50,000 contribution from Barletta to the DDF was funded or reimbursed by Achieve through the Foundation. See *infra* n.31; Foundation-Barletta Transaction; FCC Bates Number 00444, E-mail from Joy Jackson, Achieve Telecom Network, to Patricia Marcelonis, USDLA (dated Feb. 6, 2007) (stating "You should receive \$50,000 this week as confirmed today. Vincent Barletta from Barletta Engineering is donating the funds for the grant."). The investigatory subpoena produced no direct correspondence between Vincent Barletta/Barletta Engineering and USDLA, only Ms. Jackson's communications. Ms. Jackson coordinated the deposits of Barletta donations into the DDF and also instructed USDLA's staff how to handle them. See, e.g., FCC Bates Number 00446, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Nov. 20, 2006) (stating "John has a \$35,000 check from Barletta for a donation to the fund that I gave him Friday- just wanted to let you now so that you can get from him and deposit it before the holidays."). She also was the only intermediary between USDLA and Barletta for a fundraiser conducted by Barletta on DDF's behalf. See FCC Bates Numbers 00531-00532, Email from Joy Jackson, Achieve Telecom Network, LLC, to John Flores, USDLA (dated May 16, 2007) (stating "I have attached a copy of a fundraising letter that Barletta Engineering is sending out ... I would appreciate your help in keeping a running total of donors so that we can insure they receive a thank you note along with the tax donation letter."). Finally, the record shows that Achieve and Vincent Barletta's engineering firm, Barletta Engineering Corporation, share the same mailing address: 40 Shawmut Road, Canton, Massachusetts, 02021. See <http://www.barlettaco.com/>; http://www.entitysource.com/details/entity/ma_861522/achieve-telecom-network-of-ma-llc (last visited Mar. 17, 2015). Achieve also received a Funding Commitment Decision Letter from USAC on a Barletta Engineering fax number. See, e.g., Letter from USAC, Schools and Libraries Division, to Joy Jackson, Achieve Telecom Network of MA, LLC (dated Sept. 1, 2005).

³¹ See Foundation Donations. Bank records show that the Foundation disbursed funds only to the DDF, with the exception of one transfer to the Vincent Barletta Trust on May 3, 2007. See FCC Bates Number 000185, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 5-1-07 through 5-31-07) (Foundation-Barletta Transaction) (showing wire transfer to Vincent Barletta Trust in the amount of \$54,621 on 5-3-07).

³² See, e.g., FCC Bates Number 01564, Check from United States Distance Learning Association, Digital Divide Fund, to Achieve Telecom Network, Check Number 1014 in the amount of \$7,717.50 (dated Feb. 15, 2006) (noting "SOM-0206" for Somerville); FCC Bates Number 01604, Check from United States Distance Learning Association, Digital Divide Fund, to Achieve Telecom Network, Check Number 1056 in the amount of \$16,650 (dated June 12, 2007) (noting "SPR-0706" for Springfield); FCC Bates Number 01584, Check from United States Distance Learning Association, Digital Divide Fund, to Achieve Telecom Network, Check Number 1034 in the amount of \$8,100 (dated Jan. 10, 2007) (noting "SOM-0107, CHE-0107" for Somerville and Chelsea); FCC Bates Number 01586, Check from United States Distance Learning Association, Digital Divide Fund, to Achieve Telecom Network, Check Number 1037 in the amount of \$22,275 (dated Mar. 6, 2007) (noting "SOM-0703, CHE-0703, BRO-0703" for Somerville, Chelsea, and Brockton) (collectively, USDLA Checks to Schools).

³³ See FCC Bates Numbers 01673-01675, USDLA Digital Divide Account Information dated Oct. 25, 2005 through Oct. 13, 2008 (identifying deposits into the DDF and checks issued from the DDF account) (USDLA DDF Account Information).

donations for the DDF.³⁴ Ms. Jackson was privy to this information because Achieve, its business partner RCN, and Barletta were the DDF's main funding sources.³⁵ In March 2007, for example, Ms. Jackson advised USDLA to expect an "anonymous" donation for \$175,000.³⁶ Bank records show that this so-called anonymous donation was actually a transfer of funds to USDLA from the Foundation that Achieve and its principals controlled.³⁷

10. In responding to USAC inquiries about Achieve's involvement with USDLA grants, and in appealing USAC's decision to the Commission, Ms. Jackson explained that Achieve "has made applicants . . . aware of the possibility of receiving grants from USDLA and other organizations..."³⁸ and acknowledged understanding that such grants must be "independent of the service provider."³⁹ Ms. Jackson also claimed that Achieve had not marketed its services as being free to the schools,⁴⁰ and repeatedly disclaimed any form of partnership with USDLA or influence over its DDF grants.⁴¹ In particular, Ms. Jackson stated that "Achieve is not directly or indirectly funding the non-discount portion

³⁴ See, e.g., FCC Bates Number 00446, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Nov. 20, 2006) (stating "John has a \$35,000 check from Barletta for a donation to the fund that I gave him Friday- just wanted to let you now so that you can get from him and deposit it before the holidays."); FCC Bates Number 00447, Email from Joy Jackson, to Patricia Marcelonis, USDLA (dated Feb. 6, 2007) (stating "You should receive \$50,000 this week as confirmed today. Vin Barletta from Barletta Engineering is donating the funds for the grant. He is also sending out over 1,000 letters in the next two weeks asking all of his vendors and friends across the state to support the grant fund."); Ms. Jackson also repeatedly inquired about the status of contributions to the DDF and the DDF account balance. See, e.g., FCC Bates Number 00457, Email from Joy Jackson, Achieve Telecom Network, LLC, to Kim Airasian, USDLA (dated Feb. 7, 2007) (stating "did you receive the 50k yet?"); FCC Bates Number 00898, Email from Joy Jackson, Achieve Telecom Network, to Patricia Marcelonis, USDLA (dated Aug. 15, 2006) ("Trish, Can you tell me the account balance in the Digital Divide Fund?").

³⁵ See Achieve Request for Review; Foundation Donations; Barletta Donations; RCN Donations; and Achieve Donations.

³⁶ See FCC Bates Number 00496, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Mar. 1, 2007) (stating "... You will be getting a donation next week for around \$175k- and, you will not need to do a letter for this particular donation- it will be anonymous."). USDLA bank records show that the Foundation made the "anonymous" \$175,000 donation. See FCC Bates Numbers 00288-00291, Statement from Bank of America, N.A., The Ralph G. Adams Foundation Business Economy Checking (statement period 3-21-07 through 3-31-07) (showing \$175,000 wire transfer 3-22-07). See also Foundation Donations; Barletta Donations; Achieve Donations; RCN Donations; and Foundation-Barletta Transactions (tracing the transfer of funds from Achieve and its related entities to the Foundation and then to the DDF).

³⁷ See Foundation Donations.

³⁸ See Jackson Response at 2. The Jackson Response was also appended to the Achieve Request for Review as Exhibit 3.

³⁹ See Achieve Request for Review at 4.

⁴⁰ See Achieve Request for Review at 11-13.

⁴¹ See Jackson Response at 1 (stating that "Achieve's efforts [in raising funds for the DDF] are not pursuant to any partnership or agreement or understanding between Achieve and USDLA or its officers relating to grant applications from applicants specifying Achieve's services;" and "Achieve is not directly or indirectly funding the non-discount portion of an applicant."). See also Achieve Request for Review at 10 (claiming that "Achieve made no donations to the Digital Divide Fund; nor did any Achieve officer, manager, employee or owner. Achieve had ZERO control over how USDLA grants were administered and funded. USDLA independently made those decisions as a national trade association."). Contrary to Achieve's assertion that USDLA works independently of Achieve, the record is replete with evidence demonstrating the contrary, as discussed herein.

of any applicant;” “Achieve has not contributed to the fund [DDF];” and “Achieve has made no donations to the DDF.”⁴² Having received the subpoenaed documents, which demonstrate the depth of Achieve’s relationship with USDLA, Ms. Jackson has now conceded that “Achieve contributed to the Adams Foundation... [which, in turn,] contributed to the Digital Divide Fund of the USDLA... [and] knew that third party contributions to the Digital Divide Fund solicited by Achieve were drawn on by USDLA to fund grants to E-rate applicants that had service contracts with Achieve.”⁴³

11. Contrary to Ms. Jackson’s earlier assertions, the record shows that USDLA described the DDF grant program as a “partnership with Achieve Telecom.”⁴⁴ The record also shows that the DDF program was funded primarily by Achieve or its business partners and associates and that its activities were overseen by Achieve.⁴⁵ Only those schools that were clients of Achieve received DDF grants.⁴⁶ To illustrate, in March 2008, USDLA’s President, Dr. John Flores, instructed Ms. Marcelonis, an employee of USDLA who handled administrative duties for the DDF, to obtain Ms. Jackson’s approval before USDLA issued a grant approval for Brockton schools.⁴⁷ In fact, the record shows that Ms. Marcelonis looked to Ms. Jackson for guidance throughout the grant process, stating “I wouldn’t attempt to even answer any questions [about the DDF grant process] without checking [with you] - - as I really don’t

⁴² See Achieve Request for Review at 5, 7, 10-14, 18 (stating “Achieve does not market its service as a “no-cost” service because it has no control over whether a grant will or will not be made.”). See also Jackson Response.

⁴³ See Letter from Joy Jackson, Achieve Telecom Network, to Office of the Secretary, Federal Communications Commission (dated Nov. 30, 2014) (Achieve 2014 Response).

⁴⁴ See FCC Bates Numbers 00359-00363, USDLA Summer Board and Planning Meeting Notes, dated June 16-18, 2004 (stating “[h]ave formed partnership with Achieve Telecom to assist in pursuit of E-rate k-12 monetary allocation with various technology companies. Should result in USDLA as a 501(c)(3) being able to receive corporate grant monies which will be funneled into school districts.”) See also FCC Bates Numbers 00372-00374, USDLA Summer Board and Planning Meeting Notes, dated March 2006; FCC Bates Numbers 00375-00379, USDLA, Chief Executive Officer Report, Board of Directors Meeting, dated June 15, 2006; FCC Bates Numbers 00380-00384, USDLA FY09 Report, dated Oct. 24, 2008 (all referring to “continued partnership with Achieve Telecom...”).

⁴⁵ See *supra* paras. 8-9; Foundation Donations; Barletta Donations; RCN Donations; Achieve Donations. Note that Ms. Jackson prepared a grant proposal, on behalf of USDLA, for the New Balance Foundation seeking \$100,000 in donations for the DDF. See FCC Bates Number 00415, Email from Joy Jackson, Achieve Telecom Network, LLC, to John Flores, USDLA (dated Nov. 28, 2007) (stating “they [New Balance] will accept a grant proposal from USDLA for \$100,000 to support the Digital Divide Grant Fund. We are editing the proposal and cover letter we submitted last year to send to Megan Davidson at New Balance...”). See also FCC Bates Number 00416, Email from Joy Jackson, Achieve Telecom Network, LLC to Megan Davidson, New Balance Foundation (dated Nov. 29, 2007) (noting in the subject line: “USDLA-Achieve Telecom Proposal”).

⁴⁶ See FCC Bates Numbers 00348-00349, Digital Divide Fund Grants, prepared by USDLA (listing DDF grant recipients, all of which were Achieve’s clients); FCC Bates Numbers 0140-0142, August 2014 Wireline Competition Bureau Email, Attachment 3 (listing detailed information concerning checks issued by USDLA’s DDF, including checks issued to Achieve or USDLA (as its fees)).

⁴⁷ See FCC Bates Number 01297, Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated March 13, 2008) (stating “John just wanted me to run something by you. He has the reaffirm letter signed for Brockton, which says it has been approved subject to funding, *but wanted me to check if all is OK with Brockton and the Digital Divide Funding*. I have attached a copy of the letter that he has signed which is ready to go.”) (Emphasis added). In another example, Dr. Flores seeks Ms. Jackson’s approval before issuing a grant for a school district not part of this appeal. See FCC Bates Number 01426, Email from John Flores, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated April 18, 2007) (stating “received a grant application from New Haven for \$312,660... will respond accordingly... please confirm.”). See also *infra* para. 12.

know zip to be honest with you.”⁴⁸ Another email exchange shows Ms. Marcelonis seeking Ms. Jackson’s help in responding to a question from a potential client about the DDF program,⁴⁹ to which Ms. Jackson replies: “This is what you should say. Just copy and paste: ‘Mr. Bognar- Our focus is the same as E-rate which is all schools and libraries that are eligible. Our goal and vision for the USDLA Digital Divide Grant Fund is to support urban and rural schools and libraries across America. Please just substitute school for library in your grant application and cover letter and feel free to submit via email...’”⁵⁰ Additionally, the record shows that Ms. Marcelonis asks Ms. Jackson how to organize and label USDLA files for the DDF.⁵¹ Although Ms. Jackson and USDLA maintain that Dr. Flores was responsible for reviewing and approving each grant application,⁵² the record reveals that USDLA did not make all (if any) of the decisions itself and relied heavily on the guidance and direction of Ms. Jackson.

12. In addition to providing direction to USDLA on which schools should receive the DDF grants, Achieve often advised USDLA when to issue the grants, indicated what the amount of the grants should be, identified which parties at the Schools should receive the approval letters, and provided USDLA with the paperwork required to document and issue the grant approvals.⁵³ To illustrate, in an email exchange between Ms. Jackson and Dr. Flores, Ms. Jackson states: “I am not expecting you to pay Brockton’s portion UNTIL they submit the grant [request] (and are approved for USDLA support)”⁵⁴

⁴⁸ Specifically, in an email exchange on October 4, 2006, Ms. Jackson instructed Ms. Marcelonis to “[l]et me know if you get any questions back from them [an Achieve customer not part of this appeal] - - Jane is an E-rate consultant and specialist so we need to make sure we answer her questions [about USDLA] correctly and carefully.” See FCC Bates Number 01394, Email from Joy Jackson, Achieve Telecom Network, LLC to Patricia Marcelonis, USDLA (dated Oct. 4, 2006) (emphasis added). Ms. Marcelonis responded with the acknowledgement that despite administering the program for USDLA, she knew “zip” about it. See FCC Bates Number 01394, Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated Oct. 4, 2006). In another email exchange on April 24, 2008, Dr. Flores instructed Ms. Marcelonis to confirm with Ms. Jackson whether it would be permissible to pay three Springfield invoices. See FCC Bates Number 00441, Email from Patricia Marcelonis, USDLA, to John Flores, USDLA (dated Apr. 24, 2008) (stating “[t]his invoice for 3 payments for Springfield came in today from Achieve. I wanted to send it to you to see if it is ok to pay.”); FCC Bates Number 00441, Email from John Flores, USDLA, to Patricia Marcelonis, USDLA (dated Apr. 24, 2008) (responding “ok by me. Just confirm with Joy.”).

⁴⁹ See FCC Bates Number 00956, Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated Oct. 23, 2006) (stating “Can you HELP me with the following email?”).

⁵⁰ See FCC Bates Number 00958, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Oct. 23, 2006).

⁵¹ See FCC Bates Number 00984, Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated Jan. 26, 2007) (stating “Quick question- file name for this request- Erie- is that the name you would like for this file? Location?”). See also FCC Bates Number 00992, Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated Jan. 26, 2007) (asking Ms. Jackson whether Marcelonis should open a new DDF file for Hartford or is it part of the other one we sent to Dave Bognar- Library Division?). Ms. Jackson replies: “Forget Bognar- we didn’t get the contract! So open a new file for Hartford Schools.” See FCC Bates Number 00992, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Jan. 26, 2007). Apparently, Bognar, the Media Technology Specialist for the Hartford Public Library system, decided not to seek telecommunications funding at that time, and instead was considering only video conferencing equipment that Achieve did not offer. See Achieve 2014 Response, Exhibit G.

⁵² See FCC Bates Number 01050, Part III of FCC, Inspector General Subpoena (seeking documents relating to how USDLA evaluated DDF requests); Achieve Request for Review.

⁵³ See *infra* para. 13.

⁵⁴ See FCC Bates Number 00942, Email from Joy Jackson, Achieve Telecom Network, LLC, to John Flores and Patricia Marcelonis, USDLA (dated Oct. 5, 2006) (stating “John- I am not expecting you to pay Brockton’s portion
“(continued...)”

In another email exchange with Ms. Marcelonis, Ms. Jackson writes: “I have attached the grant application and cover letter from Brockton . . . *The approval letter should go directly to Anne Thompson and please send me a copy via email.*”⁵⁵ Two weeks later, after receiving the finalized DDF grant application package from the School, Ms. Jackson writes: “I have attached a PDF file for the Brockton grant- Anne Thompson is signing the letter and the app today and faxing to me then I will PDF and send to you via email. Can we proceed in drafting the grant approval letter for her ASAP?”⁵⁶ Subsequently, Ms. Marcelonis asks Ms. Jackson what USDLA needed to do to finalize the grant documentation for Brockton,⁵⁷ to which Ms. Jackson responds: “I have attached the revised letter and exhibit for the [USDLA] grant approval for Brockton. Please let me know if you have any questions. I believe that it is ready to go to Anne and for John [Flores] to sign. FYI - - *I completed it completely so all you need to do is print it off!*”⁵⁸

13. Even the DDF grant approval letters and exhibits were not drafted and prepared by USDLA, but instead by Achieve.⁵⁹ USDLA had a standard cover letter for its grant approvals, to which it attached exhibits containing the grant details, including the level of funding.⁶⁰ Once Achieve provided USDLA with the exhibits indicating the amount of the grants and other details about the School’s E-rate services, Dr. Flores would sign and send the approval letter to Achieve’s clients.⁶¹ Although Dr. Flores signed the approval letters, the record shows that USDLA approved the DDF grants only after it received

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UNTIL they submit the grant (and are approved for USDLA support) and it will take us at least a month to install because they are a full satellite system. I am fully aware that you need the grant application in ASAP and I stated yesterday in my email, I have Nic working with them to get all steps completed ASAP. If they do not submit the grant and don’t ask for USDLA assistance, then they will be responsible for the difference that E-rate doesn’t pay when the project is launched- they understand this completely. So it is their call.”) (Brockton Email).

⁵⁵ See FCC Bates Number 00897, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated July 31, 2006) (emphasis added). In response, Ms. Marcelonis reminded Ms. Jackson that “...for legal purposes we need to have the following- On the Grant Application, first page, there are no dollar amounts listed... On the letter- needs to be on Brockton Letterhead . . .” See Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated Aug. 2, 2006). Ms. Jackson then states that she will contact the School to have them finalize the documents. See FCC Bates Number 00896, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA dated Aug. 3, 2006) (stating “I had [sic] assumed that it was completely finalized at least that was what I was told. I will get it back to Dennis and have him any take care of the remaining details.”).

⁵⁶ See FCC Bates Numbers 00967, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Aug. 16, 2006). This email shows that Ms. Jackson knows that USDLA will approve Brockton’s application before the School actually submits it to USDLA. Further, when speaking of next steps, Ms. Jackson implies that she and USDLA are working together in the DDF program, urging Ms. Marcelonis that “we proceed” to draft the grant approval letter ASAP. *Id.* (emphasis added).

⁵⁷ See August 2014 Wireline Competition Bureau Email, Attachment 3, at FCC Bates Number 118 (providing Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated Nov. 1, 2006)).

⁵⁸ See FCC Bates Number 00967, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Nov. 2, 2006) (emphasis added). Note that Ms. Jackson acknowledges that she personally completed Brockton’s DDF grant letter and exhibit for Dr. Flores, whose only role in the approval was to sign it.

⁵⁹ See generally, FCC Bates Numbers 01051-1086 (various emails and letters in which Achieve employees provide USDLA with the necessary factual details, including the amount of the grants, in the form of exhibits for the DDF grant approval letters.).

⁶⁰ *Id.*

⁶¹ *Id.*

from Achieve key exhibits for the grant application, including the amount for each grant and Achieve's consent to the funding of the grant.⁶²

14. Subpoenaed documents also show that Achieve drafted the response by Dr. Flores to a USAC inquiry about USDLA's relationship with Achieve. After receiving the inquiry from USAC, Dr. Flores reached out to Achieve for advice on how to respond, expressly asking Ms. Jackson and Mr. Gatto, another Achieve employee, for guidance.⁶³ Mr. Gatto then drafted Dr. Flores's response to USAC and directed Dr. Flores to sign and return the letter to Mr. Gatto.⁶⁴ The letter, which Dr. Flores subsequently sent to USAC, essentially states that Achieve has never been a member or partner of USDLA and that no schools were guaranteed USDLA funding.⁶⁵ Thereafter, Achieve submitted this letter with its Request for Review and its November 2014 response as the primary support for its assertion that Achieve had no role in the approval of the DDF grants or USDLA decision making.⁶⁶ The veracity of this letter is highly questionable given the fact that it was prepared by Achieve.

15. The subpoenaed documents further show that USDLA and Achieve had an agreement by which USDLA would retain a portion of the funds deposited into the DDF as a "service fee" for issuing grants to Achieve's client schools.⁶⁷ This is in conflict with Ms. Jackson's assertions that: "[Achieve's] efforts concerning [USDLA grants] are not pursuant to any partnership or agreement between USDLA and Achieve."⁶⁸ The record shows that Achieve and USDLA agreed to a standard "service fee" of 10

⁶² See *supra* paras. 11-12.

⁶³ See FCC Bates Numbers 01298-01301, Letter from USAC, to Dr. John Flores, USDLA (dated Mar. 31, 2008) (requesting information concerning the DDF grant program) (USAC Letter); Facsimile from Patricia Marcelonis, USDLA, to Joy Jackson and Vic Gatto, Achieve Telecom Network, LLC (dated Mar. 31, 2008) (attaching USAC Letter) (stating "John would like to discuss the attached memo with you.").

⁶⁴ See FCC Bates Number 01320, Letter from Vic Gatto, Achieve Telecom Network, LLC, to Dr. John Flores, USDLA (dated June 15, 2010) (stating "One of the issues that needs to be explained and clarified is your use of the term 'partner' in discussing the relationship between USDLA and Achieve Telecom. What is required is a simple explanation from you that you were using the term 'partner' in a colloquial sense and that Achieve assisted in raising money to support the program and referred school districts for grants but had no decision-making role in issuing the grants. USDLA took the application, reviewed it and you made a decision yourselves. It also would be helpful for you to confirm (as your records will show) that Achieve was not a member of USDLA. A proposed declaration is attached. Please review it, sign it and send it to me by Friday, June 18 if possible.").

⁶⁵ See FCC Bates Numbers 01322, 01328, Letter from Dr. John Flores, USDLA, to USAC (dated June 21, 2010). Achieve attached this letter as Exhibit 6 to its Request for Review.

⁶⁶ *Id.* See also Achieve 2014 Response, Attachment E, Exhibit 6.

⁶⁷ See FCC Bates Number 01475, Email from John Flores, USDLA, to Joy Jackson and Vincent Gatto, Achieve Telecom Network, LLC (dated Apr. 30, 2008) (Fee Agreement). See also FCC Bates Numbers 00369-00370, USDLA, Annual Board Meeting Abbreviated Minutes, dated Oct. 17, 2005) (noting that funds raised for the new Digital Divide Fund "will be used for the installation and servicing of telecommunications systems in local K-12 school systems. USDLA will receive a 20% service fee for funds raised.").

⁶⁸ See Jackson Response (stating "Achieve's efforts in this regard are not pursuant to any partnership or agreement or understanding between Achieve and USDLA or its officers relating to grant applications from applicants specifying Achieve's services. In other words, there is no *quid pro quo* between Achieve and USDLA in this regard. Indeed, Achieve has not contributed to the [DDF] fund. Nor does Achieve have any understandings or agreements with potential donors as to conditions relating to USDLA's use of funds."). The Jackson Response included USAC's "Special Compliance Review Certification," executed by Ms. Jackson, that requires the signatory to acknowledge that false statements could be punished under sections 502 or 503(b) of the Communications Act. This certification is made "under penalty of perjury" that the contents of the submission to USAC are "true and correct." The Jackson Response was later incorporated by reference in Ms. Jackson's "Declaration" of November 7, (continued...)"

percent for DDF revenues brought in by Achieve and 20 percent for any DDF contributions brought in by USDLA.⁶⁹ USDLA's President, Dr. Flores, described this on-going arrangement in an email to Ms. Jackson and Mr. Gatto, stating: "[w]hen Vic and I spoke last year [in 2007] we agreed that 10% was a temporary issue. In the future let's agree that if USDLA brings in the revenue it will be the 20% [service fee] and if Achieve brings it in, it will be 10%."⁷⁰ Ms. Jackson confirmed this fee structure in an email to Dr. Flores stating: "I think that is a fair compromise. So, will you be replacing the 10% from this last transaction back into the account? We are expecting donations within the next 10-14 days from private funders but for now we need that extra 10% available for the schools. I will keep you updated."⁷¹

16. Finally, Achieve sent a monthly invoice to each of the Schools itemizing the charges for its services.⁷² The record shows that each invoice included a line item charge reflecting the amount of the School's non-discount share with a note indicating that the School should not pay its non-discount share because it would be covered by the DDF grant.⁷³ Achieve sent copies of these monthly invoices to USDLA, and upon receipt of the invoices, USDLA issued checks to Achieve to cover the Schools' non-discount share of the costs of Achieve's services.⁷⁴

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2008, also made "under penalty of perjury," and submitted in further support of Achieve's Request for Review. See Achieve Request for Review at Exhibit 3.

⁶⁹ See Fee Agreement. See also FCC Bates Number 00517, Email from Joy Jackson, Achieve Telecom Network, LLC, to Patricia Marcelonis, USDLA (dated Mar. 29, 2007) (stating "Can you please clarify for me that only 10% is coming out of the donations for the USDLA grant fund and not 20%?"); FCC Bates Number 00517, Email from Patricia Marcelonis, USDLA, to Joy Jackson, Achieve Telecom Network, LLC (dated Mar. 29, 2007) (stating "We are only taking 10% out."); FCC Bates Number 00650, Email from John Flores, USDLA to Patricia Marcelonis and Kim Airasian, USDLA (dated July 20, 2007) ("Go back to a 20% fee for all Achieve donations. I told Vic I would agree to 10% through June 30, 2007."). USDLA bank records show that USDLA received funds from Achieve to cover this "service fee." See, e.g., FCC Bates Number 01576, Check from United States Distance Learning Association, Digital Divide Fund, to United States Distance Learning Association, Check Number 1026 in the amount of \$10,000 (dated June 30, 2006) (noting "Transfer from Achieve/DD" on the Memo line of the check); FCC Bates Number 01587, Check from United States Distance Learning Association, Digital Divide Fund, to United States Distance Learning Association, Check Number 1038 in the amount of \$17,500 (dated Mar. 26, 2007) (noting "Achieve/Adams Foundation" on the Memo line of the check); FCC Bates Number 01605, Check from United States Distance Learning Association, Digital Divide Fund, to United States Distance Learning Association, Check Number 1057 in the amount of \$1,045 (dated July 3, 2007) (noting "Digital Divide 10%" on the Memo line of the check).

⁷⁰ See Fee Agreement. In its November 2014 response, Achieve seeks to characterize the fee agreement as "an understanding that limited USDLA's administrative charges with regard to the Digital Divide Fund." See Achieve 2014 Response, para. 3. However, these limitations merely underscore Achieve's control over the DDF process since USDLA would not draw any administrative fees (*i.e.*, funding for USDLA operations) without prior approval from Achieve, which indirectly funded the DDF grant program. This business arrangement ensured that 80 percent to 90 percent of the donations Achieve made available for the DDF grants would be available for Achieve's clients, while providing the balance to USDLA for its own operations.

⁷¹ See FCC Bates Number 01476, Email from Joy Jackson, Achieve Telecom Network, LLC to John Flores, USDLA (dated Apr. 30, 2008).

⁷² See, e.g., Email from Nicholas Gatto, Achieve Telecom Network, LLC, to Loraine Hunsinger, USAC (dated June 10, 2008) (attaching copies of Achieve invoice numbers BRO-0707, BRO-0708, and BRO-0709 for Brockton Public Schools) (Achieve Invoices).

⁷³ See, e.g., Achieve Invoices (noting "*** Please do not pay this invoice *** A copy is being sent to USDLA for payment from their Digital Divide Fund.").

⁷⁴ See USDLA Checks to Schools.

17. USAC sought to rescind and recover E-rate funds committed and/or disbursed to Achieve on behalf of the Schools after determining that Achieve provided the Schools with “a rebate for the [School’s] portion of the cost [of eligible products and services].”⁷⁵ USAC explained that because of this rebate, Achieve had an unfair competitive advantage and thus the Schools failed to conduct a fair and open competitive bidding process, as they were required to do under the Commission’s rules.⁷⁶ USAC determined that Achieve and the Schools were responsible for these violations and, accordingly, initiated recovery actions against them for funding disbursed under the FCC Forms 471 identified herein.⁷⁷

18. Achieve and the Schools subsequently appealed USAC’s decisions to the Commission.⁷⁸ In Achieve’s appeal, as elaborated above, Achieve argues that it did not have a partnership with USDLA; it did not market its service as a no-cost service to the Schools; and USDLA grants were not earmarked for Achieve funding requests.⁷⁹ Achieve also claims that it did not provide funds, either directly or indirectly, to USDLA to cover the Schools’ non-discount share, and that it had no role in deciding whether a USDLA grant would or would not be offered.⁸⁰ In the Schools’ appeals, the Schools generally argue that they were not aware that a partnership or relationship existed between Achieve and USDLA or that the funds used to pay the non-discount share were provided by Achieve indirectly.⁸¹ The Schools also argue that they did, in fact, conduct fair and open competitive bidding processes before selecting Achieve as their service provider.⁸² Achieve and the Schools now ask the Commission to reverse USAC’s decision to rescind funding commitments and/or recover funding already disbursed for the requested services.⁸³

III. DISCUSSION

19. After reviewing the record, we find that Achieve devised a scheme to pass through, control, and direct the disbursement of funds from USDLA to cover the Schools’ non-discount share of the costs of Achieve’s services, in violation of E-rate program rules.⁸⁴ We find that, as a result of this scheme, Achieve essentially provided “free services” to the Schools and caused the Schools to violate

⁷⁵ See COMADs; *supra* n.12.

⁷⁶ *Id.* (stating that “schools are required to conduct a fair and open competitive bidding process and to pay the non-discount share of the costs of eligible products and services. . . . Because Achieve is able to guarantee [the Schools] that they will receive USDLA grants to cover their share of the costs for the Achieve funding requests, Achieve is providing the [Schools] with a rebate of the [School’s] share of the cost in violation of program rules. Furthermore, Achieve has an unfair competitive advantage based on its violation of this rule.”).

⁷⁷ See *id.*

⁷⁸ See Achieve Request for Review; Schools’ Requests for Review listed in Appendices A-D.

⁷⁹ See *supra* para. 10.

⁸⁰ *Id.*

⁸¹ See Schools’ Requests for Review listed in Appendices A-D.

⁸² *Id.*

⁸³ See Schools’ Requests for Review listed in Appendices A-D; Achieve Request for Review at 19.

⁸⁴ See *supra* paras. 4-13; 47 C.F.R. § 54.523. See also *United States v. Green*, 2007 WL 3343129 (N.D. Cal. 2007) (denying Green’s appeal for wire fraud in connection with the E-rate program and stating that “[d]efendant used Alliance to give USAC the false impression that the schools had enough resources to pay for their co-pays. . . . The scheme was to use Alliance to make a ‘grant’ to the school to cover its co-pay. . . . This was a fiction used to deceive USAC into thinking the school was going to cover its own co-pay [rather than use grants arranged for by defendant].”).

their obligation to pay their non-discount share, as required under section 54.523 of the Commission's rules. In so doing, Achieve also violated its independent responsibilities for ensuring compliance with the non-discount share requirement through billing and collection efforts that the Commission requires of service providers participating in the E-rate program.⁸⁵ Additionally, we find that this scheme undermined the competitive bidding process that is essential to the integrity of the E-rate program. We discuss each of these program violations in more detail below.

20. As an initial matter, we find that Achieve had *de facto* control of USDLA's DDF, and through and with its business associates, contributed substantial funds to the DDF. As the evidence set forth above demonstrates, Achieve provided funding for DDF grants through an entity (the Foundation) that its principals controlled, and Achieve's President, Ms. Jackson, was in continuous contact with USDLA regarding the DDF's administration.⁸⁶ As previously noted, in its November 2014 response, Achieve now admits that it funded the DDF through its contributions to the Foundation, knowing that these funds would provide grants to Achieve's clients to cover their non-discount share.⁸⁷ Thus, the record shows that: (1) Achieve provided funds for the DDF, despite Ms. Jackson's earlier denials;⁸⁸ (2) Achieve and USDLA did, in fact, have an "agreement or understanding" as evidenced by the "service fee" arrangement expressly agreed upon by both parties;⁸⁹ (3) Achieve directed USDLA employees to award DDF monies to only those schools with which Achieve had an E-rate service contract;⁹⁰ and (4) Achieve instructed USDLA employees about what to do with the DDF funds and even wrote USDLA approval letters for some of the DDF grants.⁹¹

21. Further, the record refutes the numerous assertions made by Ms. Jackson "under penalty of perjury" in the Jackson Response, first to USAC in response to its inquiries, and subsequently to this Commission, when stating that: (1) Achieve's support for USDLA's DDF is "not pursuant to any partnership or agreement or understanding between Achieve and USDLA or its officers relating to grant applications from applicants specifying Achieve's services;" (2) there was "no *quid pro quo* between Achieve and USDLA;" (3) there were no restrictions or understandings about how donations to USDLA should be used; (4) "Achieve had ZERO control over how USDLA grants were administered and funded;" and (5) "Achieve has no role in the process of considering or determining the eligibility of applications for any grants made by USDLA which process is *handled completely by USDLA personnel*" (emphasis added).⁹² The record discredits each of these assertions, and in turn discredits the credibility of Achieve's principal, Ms. Jackson, who made these claims under penalty of perjury.⁹³ Moreover, the subpoenaed documents have revealed the full extent of the concealed partnership between Achieve and

⁸⁵ See *supra* para. 16.

⁸⁶ See *supra* paras. 9-13.

⁸⁷ See Achieve 2014 Response, para. 3. Achieve has eschewed its previous position that it "is not directly or indirectly funding the non-discount portion of any applicant." See Jackson Response at 1. Achieve does not explain this pivotal change in its position but merely asks that the Commission ignore its earlier filed statements (including any made under oath) if "seen as inconsistent with the information in this paragraph [3 of its November 2014 response]." See Achieve 2014 Response, para. 3.

⁸⁸ See *supra* paras. 8-9.

⁸⁹ See *supra* para. 15.

⁹⁰ See *supra* para. 11.

⁹¹ See *supra* paras. 11-13.

⁹² See *supra* paras. 10-15 (documenting false statements contained in the Jackson Response).

⁹³ See Jackson Response.

USDLA, and the control that Ms. Jackson asserted over the DDF to benefit Achieve without regard to E-rate program rules. This evidence shows that Achieve had *de facto* control over the DDF grants and sought to circumvent E-rate program rules and requirements by devising and orchestrating an elaborate scheme by which Achieve funded the Schools' non-discount share of their eligible E-rate services.

22. Achieve's reliance on Dr. Flores' response to USAC to minimize its role in the DDF grant process is unavailing.⁹⁴ First, the record shows that the grants were made only to Achieve's clients with Achieve's principal overseeing the administration of the program.⁹⁵ Additionally, as discussed above, the subpoenaed documents show that Dr. Flores' response to USAC's request for information was drafted by Achieve.⁹⁶ That alone undermines Dr. Flores' credibility and the evidentiary weight that should be accorded to the statement. Although Dr. Flores was the President of USDLA, and his approval was a prerequisite for the issuance of DDF funds, the record shows that his approval was dependent on Achieve's funding for the grants and service fees, its administrative assistance in running the DDF program, and ultimately its concurrence in grant approvals for the Achieve clients.⁹⁷

23. Violations of the Non-Discount Share Rule. We find that Achieve covered the Schools' non-discount share with funds that, unbeknownst to the Schools, were not independent of Achieve. As a result, we find that both Achieve and the Schools violated Commission rules.⁹⁸ As previously discussed, the Commission's rules require applicants to pay their non-discount share of the costs of eligible E-rate services and further compel service providers to facilitate compliance with this requirement through *bona fide* billing and collection efforts.⁹⁹ Service providers are allowed to assist applicants in obtaining grants to cover their non-discount share so long as the grants are independent of the service provider.¹⁰⁰

24. The evidence shows that Achieve funded the Schools' non-discount share by providing funds to the Foundation, which in turn transferred those funds to USDLA; USDLA, at Achieve's direction, then provided grants to the Schools through checks issued to Achieve to cover the Schools' non-discount share.¹⁰¹ Thus, the Schools violated E-rate program rules because they did not pay their non-discount share with funds independent of Achieve.¹⁰² Instead, the Schools used DDF grants that were substantially funded by Achieve and its business associates and provided only to Achieve client schools. The record, however, indicates that the Schools were unaware that USDLA grants they received would be coming from Achieve through Achieve's business associates.¹⁰³ Thus, we find that this scheme

⁹⁴ See Achieve 2014 Response, para 4.

⁹⁵ See *supra* paras. 11-13 and n.33.

⁹⁶ See *supra* para. 14.

⁹⁷ See *supra* paras. 8-13.

⁹⁸ See *supra* paras. 5-16; 47 C.F.R. § 54.523.

⁹⁹ See 47 C.F.R. § 54.523 and *supra* para. 16.

¹⁰⁰ See *supra* para. 5 and n.13 and 14.

¹⁰¹ See *supra* paras. 7-16. In its November 2014 response, Achieve no longer disclaims its role in funding the DDF grants. See Achieve 2014 Response.

¹⁰² See Achieve Request for Review at 4-5 (acknowledging that a service provider may help applicants obtain grants only so long as the grants or organizations are independent of the service provider); see also *supra* para.5.

¹⁰³ At no point does the record show that the Schools knew or should reasonably have known that Achieve was controlling the distribution of grants. See Affidavit of Daniel Vigeant, Director of Technology Services, Brockton Public School District (dated Nov. 8, 2008) (stating that "[a]t no time during any of my interactions with Achieve or any of its representatives was I ever informed or, made aware of, or otherwise led to believe or suspect that Achieve

“(continued...)”

essentially served as a hidden rebate from Achieve to the Schools to enable the Schools to obtain Achieve's services at no cost in violation of E-rate program rules.¹⁰⁴

25. Additionally, Achieve had an independent billing and collection obligation to make a *bona fide* effort to collect the Schools' non-discount share of the cost of Achieve's services.¹⁰⁵ Although Achieve sent invoices to the Schools itemizing the charges for its services, Achieve instructed the Schools to "not pay" because it had already arranged for those payments through the DDF.¹⁰⁶ Thus, the invoices were not designed to collect the non-discount share from the Schools through legitimate means, but served only as a paper trail to make it appear that Achieve had complied with its obligation to bill and collect the Schools' co-pay from sources independent of Achieve.¹⁰⁷ Given these facts and circumstances, we find that Achieve failed to make a *bona fide* effort to collect the Schools' share of the cost of Achieve's services. Therefore, to the extent that Achieve and the Schools seek review of USAC's decisions to rescind E-rate funds committed and/or disbursed to Achieve, we deny their Requests for Review.

26. Violation of the Commission's Competitive Bidding Rules. We affirm USAC's determination and find that Achieve's scheme violated the competitive bidding process that is at the heart of the E-rate program. Since the program's inception, the Commission has consistently stated that the competitive bidding process must be fair and open and must not be compromised because of improper conduct by the applicant or service provider.¹⁰⁸ The record here shows that Achieve had an unfair competitive advantage by operating a scheme through which it oversaw and controlled applicants' access

(Continued from previous page) —————

had any partnership or affiliation with USDLA"... "or that it was offering a service that would be of no cost to the District."); Declaration Statement of James Halloran, Directory of Information Technology for the City of Somerville, Somerville School District (dated Mar. 5, 2009) (stating that "Somerville was not aware of the existence of any partnership between Achieve and USDLA"... "nor did Achieve ever offer to rebate Somerville's share."); Letter from Cheryl Watson, City Solicitor, on behalf of Chelsea School District to USAC, Schools and Libraries Division (dated Jan. 29, 2009) (stating "Chelsea has and had no knowledge of a relationship between Achieve and USDLA..." and "Achieve at no time indicated in their bid an offer or guarantee of any grants or rebates for their service."); Declaration from Robert Hamel, Springfield Public School District (dated Nov. 6, 2008) (stating that "Achieve's oral and written presentations to the District... did not represent in any way that Achieve was offering a service that would be 'no cost' to the District"... and "the District was not aware of the existence of any alleged partnership between Achieve and USDLA"... "[t]he District was also unaware of any donations solicited by Achieve for USDLA.") (collectively, School Declarations). These statements are not contested.

¹⁰⁴ See 47 C.F.R. § 54.523. In its November 2014 response, Achieve seeks to defend its funding of the Schools' non-discount share by arguing that E-rate program rules prohibiting rebates is not relevant because Achieve offered the services at a lawful rate established under a Massachusetts State Master Contract. See Achieve 2014 Response. Achieve states that the DDF grants "did not render the price uncompetitive or unlawful and did not cause an overcharge to the E-rate program." *Id.* The violation of E-rate program rules prohibiting rebates, however, is not cured by offering services at a lawful rate. The record shows that the Schools served by Achieve (whether at a lawful rate or not) did not pay their non-discount share with funds independent of Achieve. By analogy, if a service provider bribed a school district in an attempt to get its business, such an unlawful act would not be "cured" merely because any contract for services later awarded to the service provider may have used rates that were otherwise considered lawful.

¹⁰⁵ See *supra* para.16.

¹⁰⁶ *Id.*

¹⁰⁷ See FCC Form 473 (requiring service providers to certify on the FCC Form 473 that it has billed the applicant for the applicant's non-discounted portion).

¹⁰⁸ See *supra* para. 6 and n.19.

to USDLA's DDF grants that could be used to cover the applicants' non-discount share.¹⁰⁹ Achieve acknowledges that it advised the Schools of USDLA grants and does not deny that it encouraged the Schools to apply for them.¹¹⁰ Achieve was the only service provider that knew the Schools likely could afford their non-discount share of the cost of the services regardless of the Schools' financial circumstances. Achieve alone knew that the time and expense for bid preparation would not be wasted because the non-discount share was secured through the DDF grants it controlled. Thus, while the Schools' capacity to pay the non-discount share may have deterred other potential bidders, this was not the case with Achieve. Its funding scheme allowed it to incur the costs of preparing bids secure in the knowledge that the Schools could participate in the E-rate program without regard to financial resource limitations.

27. Moreover, the Schools' perception that grants for the non-discount share might well be available to them¹¹¹ reasonably would have eroded their incentive to closely scrutinize the costs of Achieve's bid or seek cost constraints through negotiations because of their hope that the funding of the Schools' share would be provided from USDLA grants.¹¹² Achieve's conduct, suggesting a cost-free approach for the Schools that Achieve knew would become a reality, thus undermined the important cost control mechanisms that competitive bidding promotes when parties are doing business on a level playing field. We therefore find that Achieve had an unfair advantage in the Schools' competitive bidding processes because (1) Achieve, uniquely, knew that the Schools would be able to meet their obligations to provide the non-discount share even if the Schools did not otherwise have those funds available; and (2) Achieve knew that the Schools also would have reduced incentives to scrutinize costs in light of the grants. Thus, Achieve was able to bid without the constraints on costs that would exist in a fair and open competition. We therefore reject Achieve's assertion in its November 2014 response that "[t]he price was competitively bid in accordance with E-rate procedures."¹¹³

28. We are deeply concerned about practices such as these that undermine the framework of the competitive bidding process. Service provider actions of the type addressed here suppress fair and open competitive bidding and ultimately damage the integrity of the E-rate program.

29. Recovery of Universal Service Funds. As discussed above, the Commission has held that USAC should recover funds disbursed in violation of the Commission's rules.¹¹⁴ In this case, we direct USAC to continue its recovery actions against Achieve, while discontinuing them against the Schools. The evidence convincingly demonstrates that Achieve was in a better position to prevent the statutory or rule violation.¹¹⁵

30. USAC initially initiated recovery actions against Achieve and the Schools after determining that all parties violated E-rate program rules.¹¹⁶ While we agree that all parties violated

¹⁰⁹ See *supra* paras. 7-15.

¹¹⁰ See *supra* para. 10.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See Achieve 2014 Response.

¹¹⁴ See *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd 15252, 15255-57, paras. 10-15; *Bell South Order*.

¹¹⁵ See *supra* para. 3 and n.7.

¹¹⁶ See COMADs; *supra* n.12.

Commission rules, we conclude that Achieve was in a better position to prevent these rule violations because it alone knew that it was providing funds to the DDF for transfer to USDLA; and it alone knew the nature of its relationship with USDLA and the amount of its control over the DDF grants. Although the Schools understood that their non-discount share would be funded by DDF grants, there is no evidence in the record demonstrating that the Schools were aware of the relationship between USDLA and Achieve or that DDF funding would be coming from Achieve indirectly through its associates.¹¹⁷ We therefore direct USAC to discontinue its recovery actions against the Schools and continue recovery actions against Achieve, the party responsible for causing the violations.¹¹⁸ We encourage applicants to remain vigilant with respect to identifying unlawful schemes and to extricate themselves immediately in instances where they could be implicated in rule violations that result in the improper disbursement of funds.

IV. CONCLUSION

31. In summary, as discussed above, we find that Achieve unlawfully funded the Schools' co-payment for E-rate services through its *de facto* control of grants to the Schools and caused the Schools to violate the requirement that applicants not accept payment from vendors, directly or indirectly, for the applicants' non-discounted portion of the cost of E-rate supported services. We also find that Achieve violated its obligation to ensure compliance with the non-discount share requirement through its independent billing and collection responsibilities. Additionally, we affirm USAC's finding that these grants gave Achieve an unfair advantage during the Schools' competitive bidding processes. We therefore deny the Schools' and Achieve's Requests for Review. Further, we direct USAC to discontinue its recovery actions against the Schools, but continue its recovery actions against Achieve, the party in the best position to prevent the violation of E-rate program rules, all of which were caused by its misconduct. We also direct USAC to apply this ruling to all other applications in which Achieve is the selected service provider to the extent evidence shows that those applications were subject to the same or substantially similar misconduct on Achieve's part as described herein.

V. ORDERING CLAUSES

32. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Requests for Review filed by Achieve Telecom Network of Massachusetts, LLC, ARE DENIED.

33. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, 54.503, 54.523 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.503, 54.523 and 54.722(a), that the Requests for Review filed by Brockton Public School District, Chelsea School District, Somerville School District, and Springfield Public Schools ARE DENIED.

34. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL RESCIND funding committed under the FCC Form 471 applications and corresponding FRNs identified herein.

¹¹⁷ See School Declarations.

¹¹⁸ See *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd 15252, 15255-57, paras. 10-15; *Bell South Order*.

35. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL DISCONTINUE its recovery actions against Brockton Public School District, Chelsea School District, Somerville School District, and Springfield Public Schools, and SHALL SEEK recovery for any monies disbursed under the FCC Form 471 applications and corresponding FRNs identified herein against Achieve Telecom Network of Massachusetts, LLC, no later than 60 calendar days from the release date of this Order.

36. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL APPLY this ruling to all other applications in which Achieve is the selected service provider.

37. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Appeals Filed Related to Brockton Public Schools

Petitioner	Funding Years	Application Numbers	Funding Request Numbers	Date of Appeal
Brockton Public School District Brockton, MA	2006 2007 2008	514834 575224 614875	1416498 1590640 1754095	July 14, 2009 June 25, 2010 Dec. 29, 2008, June 25, 2010
Achieve Telecom Network of MA Canton, MA	2006 2007 2008	514834 575224 614875	1416498 1590640 1754095	June 28, 2010 June 28, 2010 June 28, 2010

APPENDIX B

Appeals Filed Related to Chelsea School District

Petitioner	Funding Years	Application Numbers	Funding Request Numbers	Date of Appeal
Chelsea School District Chelsea, MA	2005 2006	447884 502263	1232738 1381110	July 1, 2010 July 1, 2010
Achieve Telecom Network of MA Canton, MA	2005 2006	447884 502263	1232738 1381110	June 28, 2010 June 28, 2010

APPENDIX C

Appeals Filed Related to Somerville School District

Petitioner	Funding Years	Application Numbers	Funding Request Numbers	Date of Appeal
Somerville School District Somerville, MA	2004 2005 2006	425096 455467 516499	1175002 1257549 1421087	Nov. 18, 2008, June 25, 2010 June 25, 2010 June 25, 2010
Achieve Telecom Network of MA Canton, MA	2004 2005 2006	425096 455467 516499	1175002 1257549 1421087	June 28, 2010 June 28, 2010 June 28, 2010
* FCDL denial.	2008*	613046	1688549	June 28, 2010

APPENDIX D

Appeals Filed Related to Springfield Public Schools

Petitioner	Funding Years	Application Numbers	Funding Request Numbers	Date of Appeal
Springfield Public Schools Springfield, MA	2004	433768	1207981	June 25, 2010
	2005	487623	1352672	June 25, 2010
	2006	538332	1490940	June 25, 2010
	2007	577110*	1595241	June 25, 2010
Achieve Telecom Network of MA Canton, MA	2004	433768	1207981	June 28, 2010
	2005	487623	1352672	June 28, 2010
	2006	538332	1490940	June 28, 2010
	2007	577110*	1595241	June 28, 2010
*FCDL denial.				

APPENDIX E

Petitioners Filing Responses to Documentation Provided in August and November 2014

<u>Petitioner</u>	<u>Date of Response</u>
<u>Achieve Telecom Network of MA</u> <u>Canton, MA</u>	<u>November 30, 2014</u>
<u>Somerville School District</u> <u>Somerville, MA</u>	<u>September 2, 2014</u> <u>November 17, 2014</u>
<u>Springfield Public Schools</u> <u>Springfield, MA</u>	<u>August 25, 2014</u>